

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

CUTBERTO CARRENO CASTANEDA, §  
§  
Petitioner, §  
§  
V. §  
§ No. 3:13-cv-81-B-BN  
RICK THALER, Director §  
Texas Department of Criminal Justice, §  
Correctional Institution Division, §  
§  
Respondent. §

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE  
UNITED STATES MAGISTRATE JUDGE**

Petitioner Cutberto Carreno Castaneda has filed a motion for summary judgment in this 28 U.S.C. § 2254 proceeding. *See* Dkt. No. 17. As grounds for his motion, Petitioner contends that he is entitled to judgment as a matter of law because his constitutional rights were violated in connection with his 1998 conviction for possession of cocaine with intent to deliver. On February 5, 2013, Judge Boyle adopted the undersigned magistrate judge's Findings, Conclusions, and Recommendation that Petitioner's habeas petition be transferred to the United States Court of Appeals for the Fifth Circuit as successive. *See* Dkt. No. 13. Pursuant to Judge Boyle's February 15, 2013 Judgment, Petitioner's habeas application was transferred to the Court of Appeals. *See* Dkt. No. 14. Accordingly, the Court does not have jurisdiction to consider the merits of Petitioner's claims. *See* 28 U.S.C. § 2244(b). Petitioner's motion for summary judgment [Dkt. No. 17] should be denied without prejudice.

A copy of these findings, conclusions, and recommendation shall be served on all

parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

SO ORDERED.

DATED: March 4, 2013



---

DAVID L. HORAN  
UNITED STATES MAGISTRATE JUDGE